

EXHIBIT 4



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

William Lisa
Associate
T 415-984-8299
wlisa@nixonpeabody.com

One Embarcadero Center, 18th Floor
San Francisco, CA 94111-3600
415-984-8200

September 11, 2018

VIA E-MAIL AND FIRST CLASS MAIL

Ms. Catrina M. Pavlik-Keenan
Director, Freedom of Information Office
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

RE: Human Rights Watch FOIA Request: 2018-ICFO-11039

Dear Ms. Pavlik-Keenan:

Nixon Peabody LLP represents Human Rights Watch (“HRW”) with respect to the above-captioned FOIA Request 2018-ICFO-11039 (“Request”), originally submitted to U.S. Immigration and Customs Enforcement (“ICE”) on October 11, 2017. (Exhibit 1.) In its Request, HRW submitted an “updated and expanded [FOIA] request” to obtain data similar to that provided to HRW by ICE in response to HRW’s prior FOIA requests 2014-09300 and 2015-06191. (Exhibit 2.) On December 12, 2017, 40 business days after receipt of the Request, and 10 business days (15 calendar days) after ICE was required to provide a substantive response, ICE FOIA first acknowledged receipt of HRW’s request, and assigned the above-referenced number to the Request. (Exhibit 3.) On April 23, 2018, after more than four months of silence by ICE, Nixon Peabody sent ICE a letter demanding a response by April 30, 2018. (Exhibit 4). To date, an additional four months of silence, ICE has failed to respond.

ICE is required to respond substantively to a new FOIA request within 20 business days, and can at most add ten additional business days if the request is particularly burdensome. 29 CFR § 2201.6. This means that ICE was required to respond to the HRW Request no later than November 27, 2017. *Id.* While ICE FOIA finally acknowledged receipt of HRW’s FOIA Request on December 12, 2017—fifteen calendar days after its substantive response was required—ICE’s response is now well over nine months past due. ICE has not timely asserted burden, nor any other basis for its failure to respond to HRW’s pending Request. The failure is all the more inexcusable in that this Request seeks updated information that ICE has previously provided in response to prior HRW requests.

Where an agency fails to respond within the statutorily required time and has failed to acknowledge its receipt of a properly submitted request, the requester can treat the request as having been denied. 5 U.S.C. § 552(a)(6)(C). An agency’s failure in this respect gives the requester, HRW, the option of either bringing an administrative appeal or immediately filing suit, as the agency’s failure to act is deemed to exhaust administrative remedies. *Id.*

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Because of ICE's failure to provide a substantive response to the HRW Request, HRW must assume that ICE is either unwilling or unable to comply with its statutory duties. If ICE does not provide a substantive response on or before September 21, 2018, HRW is prepared to pursue all available remedies, including bringing an action in federal court.

Sincerely,

A handwritten signature in blue ink, appearing to read "William Lisa", with a stylized flourish extending to the right.

William Lisa
Associate